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09/604,503	06/27/2000	John E. Montague	23689-211	4489

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JAMES M. STOVER
NCR CORPORATION
1700 SOUTH PATTERSON BLVD, WHQ4
DAYTON, OH 45479

EXAMINER
SHAFFER, ERIC T

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _May 29, 2003_ .

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☐ Claim(s) _1 - 20_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-20_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _6/27/00_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

   If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

   a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) ☐ Notice of Informal Patent Application (PTO-152)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) ☐ Other: .

DETAILED ACTION

1.   Applicant's arguments, filed May 29, 2003, concerning claims 1 - 20 in the Office Action

mailed March 27, 2003, have been considered and deemed unpersuasive.

None of the old claims have been cancelled by the applicant and the applicant has not

added any new claims. Claims 1 – 20 are pending and are prosecuted in the response set out

below.

Claim Rejections - 35 USC § 101

2.   Claims 1 – 7 and 15 - 20 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory (i.e. abstract idea, law of nature, natural

phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the

"progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences,

for example) and therefore are found to be non-statutory subject matter. For a process claim to

pass muster, the recited process must somehow apply, involve, use, or advance the technological

arts.

Mere intended or nominal use of a component, albeit within the technological arts, does

not confer statutory subject matter to an otherwise abstract idea if the component does not apply,

involve, use or advance the underlying process. In the present case, the executable instructions

mentioned in the preamble of the independent claims 1 and 15 are not made mention of in the

body of said claims.   In order for the claimed invention to be statutory, the body of the claims

must explicitly use, apply, or involve technology.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> (e) the invention was described in a patent granted on an application for patent by another filed in the United
> States before the invention thereof by the applicant for patent, or on an international application by another w
> ho has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention
> thereof by the applicant for patent.

4.   Claims 1 - 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Thearling (US

6,240,411).

        As per claim 1, Threarling discloses a method of optimizing a campaign using a set of

executable instructions, comprising:

        receiving a campaign operable to determine a success factor and a failure factor, (column

5, lines 13 – 17, "a simple form of query examining two fields within a table-age to be greater

than 25) and income (to be greater than thirty thousand dollars per year. An alternative is to

show the current query being edited or constructed as a series of SQL statements").

        Success and failure factors, (column 9, lines 49 - 52 , "if a model generates scores in a

range from zero to one, the creator of the model might indicate that scores above 0.8 indicate a

high likelihood that a customer will provide repeat business").

        receiving a contact-list including a plurality of contacts each contact associated with one

or more demographic attributes, (column 4, lines 60 – 62, "As described with reference to FIG.

4A, a part of the campaign management process is selecting subsets or contactor further

processing"). Contacts list is associated with attributes, ("a simple form of query examining

two fields within a table-age to be greater than 25 and income to be greater than thirty thousand

dollars per year", column 5, lines 12 - 15).

associating a completed contact list with each completed contact in the contact list and a

remaining contact list with each non completed contact in the contact list, (column 1, lines 39 –

41, "a database where the records correspond to individuals, the individual's age, address, and

income").

associating at least one of the success factor and the failure factor with each completed

contact in the completed contact list, (column 3, lines 54 - 65, "A query is an inquiry, in any

form, that can be used to classify or sort records. The queries step 44 may involve different

ways of defining subsets of records in an input database. Thus, in FIG. 4B, a query might take

all records for persons with an income over thirty thousand dollars. A second query 44b might

select records of the database that have an income of over twenty five thousand dollars and an

age of over 45. In this particular example, a person who is over 45 and has an income of over

thirty thousand dollars would satisfy both the first query and the second query").

determining from the completed contact list if a correlation exists (column 9, lines 49 –

52, "if a model generates scores in a range from zero to one, the creator of the model might

indicate that scores above 0.8 indicate a high likelihood that a customer will provide repeat

business"), between the completed contacts associated with the factors and one of more of the

demographic attributes (column 1, lines 54 – 55, "the characteristics recorded in the database,

corresponding to the columns name, age, and income"), wherein the contact intervals represent

elapsed periods of time associated with environmental changes occurring outside the scope of

the campaign (column 7, lines 60 - 65, "data mining is to be performed to determine an

interesting new field or characteristic for the database, this is performed separately from

campaign management. When a new field is to be used, that field is generated from the entire

database. After the field has been generated, the campaign management process begins"),

where events occurring in an elapsed time period before the campaign begins are outside the

scope of the campaign.

retrieving each contact in the remaining contact list based on the determined correlation,

(column 6, lines 23 – 24, "The reference is used to execute the model to score at least one of the

plurality of records, and a selected set of records is selected from the database, each record of

the selected set satisfying the query").

5.   Claim 2 is the method of claim 1, further comprising removing one or more selective

contacts in the remaining contact list based on an unfavorable value of the correlation which is

associated with one or more of the selective contacts, (column 4, lines 60 – 62, "a part of the

campaign management process is selecting subsets or "contacts" for further processing") and

(column 11, lines 58 – 64, "a result table could be built by removing those records satisfying the

income test from a restricted table used for model evaluation. In this case, when the restricted

table is built, the OR query could first be formulated at a temporary table storing the results of

the first portion of the query").

6.   As per claim 3, Thearling discloses the method of claim 1, further comprising: initiating

at one or more intervals the step for determining the correlation, (column 3, lines 57 – 65, "The

queries step 44 may involve different ways of defining subsets of records in an input database.

Thus, in FIG. 4B, a query 1 44a might take all records for persons with an income over thirty

thousand dollars. A second query 44b might select records of the database that have an income

of over twenty five thousand dollars and an age of over 45. In this particular example, a person

who is over 45 and has an income of over thirty thousand dollars would satisfy both the first

query and the second query").

7.   As per claim 4, Thearling discloses the method of claim 3, further comprising: adjusting

one or more of the intervals if no substantial correlation is determined. Additional intervals can

be added or adjusted by executing an "OR" within a query, (column 8, lines 38 – 42, "a Boolean

and/or decision tree can be built for a query with leaves of the tree including nt only field

comparisons with other fields or values, but also a comparison of model scores with other fields,

model scores or values").

8.   As per claim 5, Thearling discloses the method of claim 1, further comprising: randomly

seeding the retrieved remaining contact list with an adjustable percentage of non-completed

contacts without regard for the determined correlation, (column 3, lines 17 –21, "In the split step,

the records that satisfy any applicable preceding query or queries may be divided. The division

may, for example, be a random division based on percentage. Thus, at step 46a of FIG. 4B, a

random 95% to 5% split is performed").

9.   As per claim 6, Thearling discloses the method in claim 5 further comprising: re-

determining the correlation to discover if as a result of randomly seeding a modified correlation

is detected, (column 3, lines 17 –21, "In the split step, the records that satisfy any applicable

preceding query or queries may be divided. The division may, for example, be a random

division based on percentage. Thus, at step 46a of FIG. 4B, a random 95% to 5% split is

performed").

retrieving each remaining contact in the remaining contact list based on the modified

correlation, (column 3, lines 21 – 23, "At step 46b, no split is effectively performed--all of the

records satisfying the second query at 44b are passed along through the step illustrated at 46b").

10.   As per claim 7, Thearling discloses the method of claim 1, further comprising:

discarding remaining contacts in the remaining contact list having unfavorable demographics

with respect to the determined correlation; (column 15, lines 56 – 58, "At a step 47b, an

alternative action might be to take no action at all--and any record falling into this class would be

assigned a value corresponding to taking no action").

acquiring one or more new contacts not originally associated with the contact list, each

new contact having favorable demographics with respect to the determined correlation and each

new contact sorted into the remaining contact list (column 15, lines 56 – 58, "in a system

including ranking based on model scores, the selection criteria, or query, processor may similarly

invoke the data mining engine to process the model reference").

Claim Rejections - 35 USC § 103

11.   Claims 8 - 20 are rejected under 35 U.S.C. 103(a) as being anticipated by Thearling (US

6,240,411) in view of the Barron's Dictionary of Marketing Terms".

As per claim 8, Thearling teaches is a system for optimizing campaigns, comprising:

a campaign optimizer comprising executable instructions operable to communicate with

one or more contact data stores, the data stores associated with at least one of one or more

completed contacts and one or more non completed contacts, the campaign optimizer operable to

receive completed contacts at adjustable time intervals, (column 12, lines 35 – 38, "First, the

known or determinable portions of the query are evaluated. Accordingly, a table is built that

includes only those records that meet the age greater than 30 and state=cal portion of the query.

This table may include either the entire record, or only a "tag," i.e., an identifier for the

corresponding record e.g., in a database including customers, social security number or the

unique name of the customer could be used as a "tag"; when processing is complete, the other

fields of the record necessary for further action could be determined from a larger table using the

table with the tag id's for identifying the records that include the larger set of fields").

a non-completed contact sorter comprising executable instructions operable to

communicate with the correlator, one or more of the data stores, and the campaign optimizer, the

non completed contacts sorter operable to sort non completed contacts in one or more of the data

stores based on the correlation, (column 15, lines 46 – 48, "further process the models scores to

produce a temporary table that includes only records satisfying the query element involving the

model"), where query element is synonymous with executable instructions.

a correlator comprising executable instructions operable to communicate with the

campaign optimizer, to receive the completed contacts, and to determine if a correlation

associated with the completed contacts exist between the completed contacts identified with at

least one of a success factor and a failure factor and one or more demographic attributes;

(column 6, lines 17 – 21, "the present invention, a method of classifying a plurality of records in

a database is disclosed. According to this embodiment, a model for ascertaining a characteristic

of records in a database is provided. A selected criteria, such as a query or ranking, is formed

including a reference to the model"). In this embodiment, characteristics of records is synonymous with demographic attributes and ranking is synonymous with correlation, where higher rank is higher correlation.

Thearling does not specifically give mention to the correlation during each of the adjustable time intervals, the adjustable time intervals representing environmental changes occurring outside the scope of a campaign.

However, the "Dictionary of Marketing Terms" does in fact give as a definition of the word "campaign" as "a series of related advertising communications or promotional pieces, scheduled for a given period of time" (page 82). A campaign, by definition, does in fact take place over period of time or a time interval, and therefore the time interval as claimed by the applicant is inherent within the Thearling claim of a campaign management device. It would be obvious to one of ordinary skill in the art at the time the invention was made to have the campaign device monitor the conduct of a campaign over a period of time. Said time period or interval would by the very unpredictable nature of sales, necessarily be an adjustable time interval. The interval would be have to be adjustable to reflect a campaign with a given sales or revenue goal. If sales goals were met early in the campaign, the time interval would be adjusted to end the campaign when a sales goal has been met. Similarly, if a campaign was not meeting sales goals, it would be logical to extend the length of the campaign until such time as the sales goals are finally met. And if the campaign were to be a total failure, then the campaign would be cancelled, which would also be an adjustment to the time interval. A sales or marketing campaign management device would have to monitor campaigns as they occurred over an adjustable time period in order to be functionable.

12.   As per claim 9, Thearling teaches the system of claim 8, wherein the correlator is

operable to determine a correlation coefficient for each of the demographic attributes, (column

12, lines 59 – 63, "a table can be built including records that only have a model score of greater

than 0.7",).

13.   As per claim 10, Thearling teaches the system of claim 8, wherein the contacts are

associated with an outbound contact campaign (column 15, lines 4 – 6, "In this embodiment, the

data warehouse 125 stores the database tables, e.g., all of the tables storing customer information

for a marketing campaign").

14.   As per claim 11, Thearling teaches the system of claim 8, further comprising: an

outcome analyzer comprising:

         executable instructions operable to determine upon completion of one or more of the

completed contacts if the completed contact is associated with at least one of the success factor

and the failure factor, (column 14, lines 60 – 67, "The campaign manager may include (in

addition to other components for performing the campaign management functions described

above not shown, a query processor. In this embodiment, the query processor is responsible for

controlling evaluation of a query, e.g., parsing a Boolean tree as generally described above.

When being used, a query with model reference or references may be input into the query

processor"), where a parsing query processor is synonymous with executable instructions and

references are synonymous with contacts.

15.   As per claim 12, Thearling teaches the system of claim 8, further comprising an

optimization manager comprising executable instructions operable to randomly seed the non-

completed contacts in one or more of the data stores with a percentage of non-completed

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contacts without regard to the correlation, (column 3, lines 17 –21, "In the split step, the records

that satisfy any applicable preceding query or queries may be divided. The division may, for

example, be a random division based on percentage. Thus, at step 46a of FIG. 4B, a random

95% to 5% split is performed").

16.   As per claim 13, Thearling teaches the system of claim 12, wherein the optimization

manager is operable to communicate with the correlator to re-determine a modified correlation

based on completed contacts associated with the randomly seeded contacts, (column 4, lines 60 –

62, "a part of the campaign management process is selecting subsets (or "contacts") for further

processing").

17.   As per claim 14, Thearling teaches the system of claim 13, wherein the optimization

manager is operable to communicate to the non completed contacts sorter the modified

correlation resulting a resort of the non completed contacts in one or more of the data stores

based on the modified correlation (column 6, lines 18 – 25, "According to this embodiment, a

model for ascertaining a characteristic of records in a database is provided. A selected criteria,

such as a query or ranking, is formed including a reference to the model. The reference is used

to execute the model to score at least one of the plurality of records, and a selected set of records

is selected from the database, each record of the selected set satisfying the query").

18.   As per claim 15, Thearling teaches a method of optimizing a contact list during a

campaign using a set of executable instructions, comprising:

identifying a contact campaign, (column 3, lines 11 – 13, "The purpose of campaign

management is to select and categorize the records of the database, e.g., a corresponding row,

such as 31b, 31c, 31d or 31e, for a variety of actions or create a "segment" or segments of the

database for action").

receiving a contact list including completed contacts and non completed contacts, each of

the contacts associated with a success factor, a failure factor, and one or more demographic

attributes (column 3, lines 53 – 65, "a step 42, a de-duplication or "dedupe" may be performed.

This step may be best understood with the following step, 44, where queries are performed. A

query is an inquiry, in any form, that can be used to classify or sort records. The queries step 44

may involve different ways of defining subsets of records in an input database. Thus, in FIG.

4B, a query 1 44a might take all records for persons with an income over thirty thousand dollars.

A second query 44b might select records of the database that have an income of over twenty five

thousand dollars and an age of over 45. In this particular example, a person who is over 45 and

has an income of over thirty thousand dollars would satisfy both the first query and the second

query").

reordering during the contact campaign the non completed contacts based on the

correlation (column 6, lines 18 – 21, "a model for ascertaining a characteristic of records in a

database is provided. A selected criteria, such as a query or ranking, is formed including a

reference to the model").

determining during the contact campaign at adjustable intervals a correlation between the

factors and one or more of the demographic attributes of the completed contacts (column 3, lines

53 – 65, "Thus, if a model generates scores in a range from zero to one, the creator of the model

might indicate that scores above 0.8 indicate a high likelihood that a customer will provide repeat

business).

Thearling does not specifically give mention to the correlation during each of the

adjustable time intervals, the adjustable time intervals representing environmental changes

occurring outside the scope of a campaign.

However, the "Dictionary of Marketing Terms" does in fact give as a definition of the

word "campaign" as "a series of related advertising communications or promotional pieces,

scheduled for a given period of time" (page 82). A campaign, by definition, does in fact take

place over period of time or a time interval, and therefore the time interval as claimed by the

applicant is inherent within the Thearling claim of a campaign management device. It would be

obvious to one of ordinary skill in the art at the time the invention was made to have the

campaign device monitor the conduct of a campaign over a period of time. Said time period or

interval would by the very unpredictable nature of sales, necessarily be an adjustable time

interval. The interval would be have to be adjustable to reflect a campaign with a given sales or

revenue goal. If sales goals were met early in the campaign, the time interval would be adjusted

to end the campaign when a sales goal has been met. Similarly, if a campaign was not meeting

sales goals, it would be logical to extend the length of the campaign until such time as the sales

goals are finally met. And if the campaign were to be a total failure, then the campaign would be

cancelled, which would also be an adjustment to the time interval. A sales or marketing

campaign management device would have to monitor campaigns as they occurred over an

adjustable time period in order to be functionable.

19.   As per claim 16, Thearling teaches the method of claim 15 further comprising seeding in

random order an adjustable percentage of the non completed contacts without regard for the

correlation, (column 3, lines 17 -21 "In the split step, the records that satisfy any applicable

preceding query or queries may be divided. The division may, for example, be a random

division based on percentage. Thus, at step 46a of FIG. 4B, a random 95% to 5% split is

performed").

20.   As per claim 17, Thearling teaches the method of claim 16, further comprising:

determining a new correlation by evaluating the factors and one or more of the

demographic attributes for completed contacts after the seeding step; (column 3, lines 7 – 9,

"One or more of the fields may correspond to a characteristic computed according to one of the

above models generated through data mining or other technique, e.g. column 32d having a

score").

reordering the non completed contacts based on the new correlation. This is anticipated

by Thearling, which discloses, (column 3, lines 11 –13, "the purpose of campaign management is

to select and categorize the records of the database").

21.   As per claim 18, Thearling teaches the method of claim 15, further comprising receiving

a reference operable to modify and retrieve one or more contact data records from one or more

data stores associated with each of the contacts, (column 5, lines 39 – 43, "Additions or

alterations to the current query being edited can be done with a separate pop-up tool bar 54a-54h.

Thus, a cursor marker (not shown) present in the current query 55 could indicate where

additional query language commands could be inserted") and features an example of the screen

from which said queries can be executed in Figure 5.

22.   As per claim 19, Thearling teaches the method of claim 15, further comprising reporting

summary data associated with the contact campaign; (column 4, lines 40 – 47, "first extract for

48a may be formed in the example of FIG. 4B for providing a file to a mail order house that

would arrange for mailing of appropriate coupons. In this case, an output data file could be formed that includes the name, an address field, and the particular value proposition i.e. mailing a five dollar or ten dollar coupon").

23.   As per claim 20, Thearling teaches the method of claim 15, wherein the contact campaign is conducted over at least one of an e-mail channel, an on-line chat channel, a voice channel, a video channel, an audio channel, a kiosk channel, an ATM channel, and a wireless channel, (column 3, lines 20 - 22, "Action 1 36a may correspond to sending a person a coupon through the mail. Action 2 36b may correspond to making a telephone call to the individual").

Response to Ammendments

24.   Applicant's arguments filed May 29, 2003 have been fully considered, but the same are not persuasive.

a) Applicant argues that Thearling fails to teach an adjustable time interval. However, a time interval is inherent in the definition of a campaign, and a marketing campaign is in fact taught by the Thearling campaign management device.

b) Applicant argues that Thearling does not teach the influence of time on the calculations necessary to analyze and score a record. However, Thearling teaches use of a "field corresponding to the approximate amount of computational time necessary to score an individual record. This could be useful in the embodiment described below, if the user of an automatic query tool wishes to determine how much computational effort is justified to narrow the number of records that need to scored by the model"). Clearly the Thearling device teaches the relationship between computational time and computational effort to score an individual record.

c) Applicant argues that Thearling fails to teach how to alter an algorithm. However, no where in the claim language is the capacity to alter an algorithm claimed by the applicant. The point of said argument is unclear.

In light of the above stated facts, examiner respectfully states that applicant's arguments have been fully considered, deemed unpersuasive and the rejections under the prior Office Action, mailed on March 26, 2003 are maintained.

Conclusion

25.   No claims were allowed and all claims were rejected.

26.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

> Hazlehurst et al (US 6,289,353) – Query index database system for categorizing users
> Hazlehurst et al (US 5,974,412) – Datbase query system for categorizing users
> Webster's Third New International Dictionary, 1961 – definition of 'campaign'

27.   Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

> Commissioner of Patents and Trademarks
> Washington D.C.   20231

Or faxed to:

(703) 746-7238   [After Final communications, labeled "Box AF"]

(703) 746-7239   [Official communications]

(703) 706-9124   [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 2, 7th floor receptionist.

ETS
August 19, 2003

TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600